IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR NO. 11-1213 MCA

DENNIS LOVATO,

Defendant,

DEFENDANT LOVATO'S SENTENCING MEMORANDUM

COMES NOW Defendant Dennis Lovato by his court-appointed attorney, John F. Moon Samore, Esq., pursuant to the Rules and the United States Sentencing Guidelines and 18 USC §3553, for his Sentencing Memorandum, to STATE:

STATEMENT OF CASE

Sentencing hearing for Mr. Lovato is set April 17 before this Court. Mr. Lovato was taken into custody the night of the April 6, 2011, incident and charged by Criminal Complaint April 20. He was charged by redacted indictment of May 11, 2011, with second degree murder.

After vigorous motion practice by both sides, hearing on the Motion to Suppress Statement, one of the pending motions, was conducted October 16, 2013. Testimony was taken from officers and the Defendant. The Court denied the motion.

On October 24, 2013, Mr. Lovato pled guilty to the indictment with an 11(c)(1)(C) agreement to a term of twelve (12) years.

STATUTORY FRAMEWORK

The statutory framework of federal sentencing has changed in recent years. 18 USC §3553(a) requires the court to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of federal sentencing, and imposes a statutory duty to consider:

1) the nature and circumstances of the offense and the history and characteristics of the defendant;
2) the purposes of criminal punishment;
3) the kinds of sentence available;
4) the Guideline range;
5) Sentencing Commission Policy Statements;
6) the need to avoid unwarranted sentencing disparities; and
7) the need to provide restitution.

The purposes of federal sentencing enumerated in 18 USC §3553(a)(2) are the need for the sentence imposed:

a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
b) to afford adequate deterrence to criminal conduct;
c) to protect the public from further crimes of the defendant; and
d) to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner.

Federal district courts are free to deviate from the guidelines in order to tailor individual sentences in light of other 3553 factors. Kimbrough v. United States, 128 S. Ct. 558 (2007). The federal sentencing guidelines are not mandatory and are but one factor the court must consider in imposing sentence. United States v. Booker, 543 U.S. 220, 125 S. Ct., 739 (2005). The guidelines are presumed to be "reasonable." United States v. Nelson, 129 S. Ct. 890 (2009). No rule requires "extraordinary" circumstances to justify a sentence outside the guidelines. District court sentencing decisions are reviewed for an abuse of discretion. Gall v. United States, 128 S. Ct. 586 (2007).

STATEMENT OF FACTS

The primary players in this drama are all legally defined as "Indians," Pueblo people who are not Navajo (Dene). The incident occurred in Santo Domingo Pueblo on April 15, 2011. The alleged victim was a 61-year-old Vietnam combat veteran, who returned with severe post-traumatic stress disorder and had spent the remainder of his life earning a violent reputation throughout his community as a brutal man, convicted of multiple violent felonies, given to abusive personal habits as well, and had serious terminal health problems. The Defendant was a 26-year-old young man with no prior felonies who knew of Mr. Lucero by his violent reputation but had never met him personally. Nelson Garcia and Eddie Garcia were two gentlemen traveling with Mr. Lovato that evening, and Mr. Lovato driving Mr. Garcia's 1999 Dodge Durango.

Around midday, Eddie Garcia and Mr. Lovato began drinking, and over the course of the next twelve hours consumed a prodigious amount of alcohol. About ten hours later, Eddie Garcia was passed out in the front passenger seat, and Mr. Lovato was driving Nelson Garcia, another drunken man who had joined Eddie and Dennis in the evening, to the Tesuque Street residence of Mr. Lucero. Mr. Lovato remained in the vehicle outside the property's fence perimeter while Mr. Garcia got out to talk to Mr. Lucero. Mr. Lovato and Mr. Lucero eventually got into an argument and began fighting. The various recollections of Nelson Garcia differ, but a short-time later, Mr. Lucero was lying on his back, coughing and bleeding in front of his home, while Mr. Lovato was driving away from the area with both Garcias as passengers.

When Mr. Lovato saw a marked BIA vehicle, he pulled over to the side of the road and informed the officer that he had been in an altercation with Mr. Lucero. Mr. Lovato was arrested for DWI and taken to tribal headquarters to be photographed and interviewed.

The following morning, he was, while still under the influence of the alcohol he had stopped drinking only at the time of the arrest, interviewed by FBI Agent Russell Romero. Mr. Lovato gave a statement that included several comments which the Prosecution will intend to offer as admissions against interest.

DISCUSSION

The incident and consequences that bring Mr. Lovato before this Court for sentencing are again the all-too common set of facts and circumstances that break up many families of our Native culture, distorted by poverty, isolation, depression, and alcohol. The Plea Agreement includes a paragraph regarding surrender of his law enforcement credentials, which is probably included by mistake from the Lytle (or similar) case and of no consequence herein. The Defense disagreement with the calculation of maximum sentence exposure had Mr. Lovato been convicted at trial does not arise to the level of Formal Objection and is of no consequence in this tragic situation. The Defense could also present evidence of §3553 factors, including a difficult family upbringing, poverty, and the conduct of the victim, but, for the same reason as the previous sentence, those factors also are of scant consequence.

The evidence was largely circumstantial. No reliable witnesses to the incident were available. Extensive pathological evidence was thoroughly examined. Qualified experts assessed causality and attempted to interpret the evidence to reconstruct what may have happened. This case was vigorously litigated by competent counsel on both sides, and intriguing legal issues remained to be addressed at the time the plea was entered.

The Pre-Sentence Report fairly describes Mr. Lovato's promising childhood, his disconcerting slide into youthful alcohol abuse, and his presence in the hours leading up to the fatal confrontation in the company of two middle-aged, severe alcoholics with long criminal histories. Whatever the precipitating factor, Mr. Lovato wound up in a "fight for his life" with yet another middle-aged alcoholic, who was bent on hurting Mr. Lovato. Mr. Lucero's extensive criminal history and violent past is fairly summarized in the PSR and Addendum. Mr. Lovato eventually overwhelmed Mr. Lucero, and the evidence indicated he administered more blows than necessary to defend himself.

Mr. Lovato, lacks specific recollection of the events but has been made fully informed of what the evidence shows and does not deny the act of which he is accused. He realizes that, having prevailed in the confrontation, to have continued to batter an older, smaller man is criminal conduct, and he has an obligation to society and to himself to fulfill.

CONCLUSION

He humbly asks the Court to accept the plea agreement, to grant him the opportunity to overcome his alcoholism, grief, depression, and regret. For his children, especially the young son born while he has been in custody, for Mr. Lucero, and for his responsibilities to himself and his family, he asks forgiveness and pledges to emerge from custody a better person committed to living a responsible life.

Respectfully submitted,
/s/ John F. Moon Samore, Esq.
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I hereby certify that a true and correct copy of the foregoing document was faxed to opposing counsel on the 2nd of April, 2014.

/s/ John F. Moon Samore, Esq.